

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## **Advice Memorandum**

DATE: January 10, 2007

TO: Peter B. Hoffman, Regional Director  
Region 34

FROM: Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: UNITE HERE, Local 217 (Waterford 578-8075-8050-5600  
Venue Services Hartford LLC) 578-8075-8050-5625  
Case 34-CP-24 578-8075-8050-5650  
578-8075-8050-5675

This case was submitted for advice on whether the Union violated Section 8(b)(7)(C) by picketing the Employer for more than 30 days, with an organizational and recognitional object, without filing a petition. We find that the Union's conduct, including picketing and handbilling, was protected by Section 8(b)(7)(C)'s publicity proviso and was therefore not unlawful.

### **FACTS**

UNITE and other unions have been attempting to organize the Connecticut Convention Center in Hartford, part of Adriaens Landing complex, which opened in June 2005. The Employer, Waterford Venue Services Hartford, manages the Center and employs about 125 workers there.

On April 6, 2006, the Union and Employer met to discuss the organization campaign, and the Union requested a "labor peace agreement." The Union provided a sample that included, among other things, voluntary recognition based upon a majority of employees signing union authorization cards. The Union representatives told the Employer that to avoid picketing, demonstrations, and labor strife, the Employer should sign a similar agreement. The Union representatives said that picketing would begin outside the Convention Center on April 22 unless the Employer signed the agreement. The Employer would not agree to a card check and refused to sign the agreement.

The Union subsequently engaged in demonstrations, picketing and/or handbilling on about six occasions over the next month and a half. On the first such occasion, on April 22, the Union held a rally at the Convention Center's main front entrance attended by 150 to 200 people, including Union members and members of the public. Speakers, including Hartford mayor Eddie Perez and church

and community leaders, stood on a large flat bed truck parked in front of the Center. There is no clear evidence as to what signs the Union or other attendees used at this rally. The Employer's General Manager Mike Costelli testified that he thought the signs said something such as "Adriaens Landing is Unfair Because it is Non-Union," but he admits that he could not recall the precise language.

The Union's representative, Antony Dugdale, testified that the Union did not authorize any signs utilizing the word "unfair" and that he did not see any signs with that word at this rally. Dugdale stated that many individuals other than Union members participated in the rally and that individuals held up different signs. According to Dugdale, the rally lasted one hour, there was no patrolling, participants did not impede access to the Convention Center, and no signs were attached to sticks.

On May 4, the Union admits that it picketed the Convention Center with 18 to 20 union supporters. The Union provided pictures of the picket signs utilized, which stated:

Boycott the  
CONNECTICUT CONVENTION CENTER  
It has  
NO CONTRACT  
with UNITE HERE Local 217  
Or SEIU Local 32BJ  
NOT INTENDED TO STOP DELIVERIES  
OR CAUSE ANYONE TO CEASE WORK.

Dugdale testified that this was the only picket sign that the Union used on this and all subsequent occasions, that he was solely responsible for handling all picket signs, and that he locked them in his car when they were not in use. The Union provided several photographs of its activities, which showed Union agents patrolling with the above-described picket signs. Costelli asserts that protesters carried signs "like" the ones he observed at the initial rally. The Union denies that its signs ever used the word "unfair."

Costelli asserts that on May 4, the union officials also handed out a green leaflet entitled "Boycott Adriaens Landing Convention Center and Hotel!" to passersby. The Union provided a copy of that handbill (that it asserts it first utilized on May 10), which explained that the City of Hartford had given the Employer tax breaks to agree to "labor peace;" that the Employer was refusing to comply with the city ordinance; that the Employer was failing to give priority hiring to Hartford residents and to publicly disclose wages; and that "elected officials, community

leaders and residents throughout the state have pledged not to patronize Adriaens Landing until Waterford obeys the law." The handbill concluded, "Join them and tell the Waterford Group to comply with the law!" This was the only handbill used by the Union on this and all other occasions.

On May 10, Costelli asserts that 15 individuals distributed the green handbill again to passersby. Costelli recalls that many protestors carried signs "like" the signs he saw at the rally. The Union claims that only two or three individuals participated and that no picketing took place.

On May 20, a few individuals walked back and forth on the driveway leading to the Convention Center's motor court and distributed the same literature. Costelli asserts that picket signs similar to ones used in the past were used, but Dugdale asserts that all picket signs were locked in his car and that no picketing took place.

On June 1, Costelli asserts that 25 individuals appeared in front of the Center for two hours, carrying picket signs similar to previous signs and distributing the same green flyers.

Costelli asserts that on June 4, it was reported to him that one or two guys came and walked around the motor court for an hour passing out the green flyers. The Union does not recall whether any activity took place on June 1 or 4.

Finally, on June 12, the Union admits that it picketed for an hour each in the morning, lunchtime, and afternoon. About 25 individuals participated and stayed in the same area as previous picketing and handbilling and used the same signs and handbills.

The Union claims that all picket signs contained the proviso language and has provided pictures and specific affidavit evidence confirming this. The Employer claims that the picket signs may have utilized the word "unfair." However, despite being given several opportunities to do so, the Employer failed to present documentary evidence, such as photographs or surveillance tape, and Employer representative Costelli admits that he is unsure of the exact wording of the sign. Accordingly, the Employer has not presented sufficient evidence to contradict the Union's evidence regarding the message on the signs.

In addition, there is no evidence that any deliveries were interrupted or stopped as a result of the Union's activities. Delivery entrances are on the opposite side

of the Convention Center from the front area in which the union activity occurred, and the front areas cannot be seen from the delivery entrances. The front entrance and motor court are used almost exclusively by customers rather than Convention Center employees. No employees ceased working because of the Union's activities.

### **ACTION**

The Region should dismiss the charge absent withdrawal because the Union's picketing and handbilling met the requirements of Section 8(b)(7)(C)'s publicity proviso.

Union picketing of an unorganized employer, which has as one of its goals either organization or recognition, generally violates Section 8(b)(7)(C) where the union fails to file an election petition within a reasonable period of time not to exceed 30 days from the commencement of picketing, unless the picketing is privileged under the section's publicity proviso.<sup>1</sup>

Initially, we note that the Union's picketing here had an organizational and recognitional object.<sup>2</sup> In April 2006, the Union requested that the Employer sign a labor peace agreement with a card check procedure providing for voluntary recognition upon a majority showing. The Union then threatened to picket the Employer if it did not sign the agreement and followed up that threat by engaging in picketing with signs informing the public that the Employer did not have a contract with the Union. Thus, it is clear that an object of the Union's conduct was organizational and recognitional.<sup>3</sup>

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<sup>1</sup> Construction Laborers, Local 1140 (Lanco Corp.), 227 NLRB 1247 fn. 2 (1977).

<sup>2</sup> The Union claims that some of its activities, including the April 22 rally, did not constitute picketing. However, the Union does admit that it picketed on two occasions (May 4 and June 12), more than 30 days apart, without filing a Section 9(c) petition. See Electrical Workers, Local 265 (R P & M), 236 NLRB 1333, 1339 (1978) (picketing on two separate occasions separated by 42 days violated Section 8(b)(7)(C)), enfd. 604 F.2d 1091 (1979). As to other allegations of nonproviso picketing, given the vagueness of Costelli's testimony and the Charging Party's failure to provide other evidence, there is insufficient evidence that such picketing took place.

<sup>3</sup> See Operating Engineers, Local 17 (Zoladz Construction Co.), Case 3-CP-398, Advice Memorandum dated June 11, 2003 (union conceded organizational and recognitional object

Where a union has engaged in recognitional picketing for more than thirty days without filing a Section 9(c) petition, the picketing violates Section 8(b)(7)(C) unless it is informational picketing within the scope of the publicity proviso. To fall within the proviso, such picketing must: (1) be for the purpose of truthfully advising the public that an employer does not employ members of or have a contract with a union; and (2) not have the effect of inducing a work stoppage.<sup>4</sup>

To meet the proviso's first requirement, the pickets' message need not reiterate the precise proviso language as long as the signs "embod[y] in substance the language of the publicity proviso."<sup>5</sup> Further, the mere fact that proviso protected picketing is occurring simultaneously with other union activities for recognition, bargaining, or organization does not remove proviso protection.<sup>6</sup> On the other hand, where picketing, ostensibly directed at the public, is transparently not for that purpose but, rather, focused upon employees, it is not protected by the Section 8(b)(7)(C) proviso.<sup>7</sup>

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when it threatened to picket unless employer signed neutrality/card check agreement); UNITE (Hennes & Mauritz d/b/a H & M), Case 2-CP-1040 et. al., Advice Memorandum dated January 21, 2004 (same).

<sup>4</sup> Local Joint Executive Board of Hotel Employees (Leonard Smitley et al. d/b/a Crown Cafeteria), 135 NLRB 1183, 1184-85 (1962), enfd. 327 F.2d 351 (9th Cir. 1964).

<sup>5</sup> See Retail Clerks, Local 1404 (Jay Jacobs Downtown), 140 NLRB 1344, 1346 (1963) (picket signs that stated employer was nonunion, asked public to shop elsewhere, and listed stores where public could shop was within proviso). See also Carpenters Dist. Council of St. Louis (Vestaglas, Inc.), 136 NLRB 855, 856-57 (1962) (picket signs that said "EMPLOYEES DO NOT BELONG TO THE A.F.L.-C.I.O. AND HAVE SUBSTANDARD WAGES AND WORKING CONDITIONS" were within proviso).

<sup>6</sup> See Crown Cafeteria, 135 NLRB at 1185.

<sup>7</sup> Electrical Workers Local 3 (Jack Picoult), 144 NLRB 5, 8 (picketing not within proviso where it took place near delivery entrances and places not frequented by members of the public; apparent that not directed at achieving limited purpose of communicating with public but "was also intended to be precisely that 'signal' to organized labor which Congress sought to curtail"); Philadelphia Window Cleaners, Local 125 (Atlantic Maintenance Co.), 136 NLRB 1104, 1105

In Jumbo Food Stores,<sup>8</sup> union demonstrators carried signs that embodied the statutory language and also distributed handbills, which stated in part:

Jumbo Food Stores undermines the living standards of Food Store employees in this community. Their firm does not maintain the fair wages and working conditions which prevail at a number of supermarkets in the Greater Washington area.<sup>9</sup>

The Board adopted the Administrative Law Judge's finding that the picketing had a recognitional object, based on the union's prior organizing campaign and demand for recognition, but found that the picket signs, along with the simultaneous handbilling, conformed to the proviso.<sup>10</sup> It is thus well-established that publicity picketing does not lose its protected, informational character when conducted simultaneously with handbilling that provides additional details related to the labor dispute.<sup>11</sup>

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(1964) (picketing not within proviso where signs were addressed both to "Employees of Atlantic Maintenance" and to the "Consuming Public," requested employees to "join our union," and were stationed at employee entrances).

<sup>8</sup> Retail Stores Employees, Local 400 (Jumbo Food Stores), 136 NLRB 414 (1962).

<sup>9</sup> Id.

<sup>10</sup> Id. at 415, 417, 420-21.

<sup>11</sup> See, e.g., Cleveland Moving Picture Operator's Local 160 (Ashtabula Entertainment Corp.), 8-CP-324, Advice Memorandum dated March 16, 1989 (where picket signs and some of handbills contained precise statutory language, and other picket signs and handbills contained additional messages, such as reprints of local newspaper stories about controversy, "22 Terminated without notice;" and "Unfair; New Owners Will Not Talk to or Hire Past Employees," "predominant picketing message" fell under proviso); United Food & Commercial Workers, Local 880 (Wholesale Club), Case 8-CP-314, Advice Memorandum dated July 27, 1988 (where picket signs conformed to proviso and handbills contained additional messages, such as "NON-UNION WHOLESALE CLUB ONLY LIKES ORGANIZED LABOR FOR ONE THING . . . Your MONEY," conduct fell under protections of proviso); United Food and Commercial Workers Local 23 (John Johnson d/b/a Duncan Manor Foodland), Case 6-CP-429, Advice Memorandum

This case falls squarely under Jumbo Foods. As in Jumbo Foods, the Union had an organizational and recognitional object. Further, the Union's picket signs requesting customers to boycott the Employer and informing them that the Union does not have a contract with the Employer also fell precisely within the proviso's protections.<sup>12</sup> Finally, as in Jumbo Foods, the fact that the handbills contained additional details about the dispute (such as the Employer's unwillingness to sign a labor peace agreement, to give priority hiring to Hartford residents, and to disclose wages) did not remove the picketing from the proviso's protection. Accordingly, under established Board law, the predominant message of the picketing and handbilling clearly falls within the proviso.

The picketing here also complied with the proviso's second requirement and did not disrupt any deliveries to the Employer's business or cause any work stoppages. The Union confined its picketing to customer entrances, rather than employee or delivery entrances. The picket signs clearly stated that the activity was not intended to have a secondary effect and were addressed to the public, not employees. Because the picketing comported with the substance of the proviso, did not induce a work stoppage, and had no secondary intent or effect, it was lawful.

Accordingly, absent withdrawal, the Region should dismiss the charge.

B.J.K.

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dated on September 25, 1985 (where picket signs contained precise statutory proviso language and handbills contained additional area standard message, picketing fell under protections of proviso).

<sup>12</sup> See Smitty's Supermarkets, Inc., 310 NLRB 1377, 1378 (1993) (picket signs urging public not to shop at employer's store and stating that employer did not have contract with union fell within proviso).